

REQUEST FOR RECONSIDERATION

Applicants thank Examiner Smith for the helpful and courteous discussion of August 17, 2005. Applicants further thank the Examiner for indicating that a Supplemental Amendment presenting further arguments and/or amendments in support of patentability may be entered and considered in view of the fact that a new examiner was assigned to this case subsequent to the resignation of the original examiner (i.e., Examiner Gedrich).

During the discussion, the Examiner brought U.S. Patent Nos. 5,911,131 (Vig) and 5,950,178 (Borgato) to the attention of Applicants' U.S. representative. Applicants' representative pointed out that a process that is directed towards deriving or providing a price for an art item is different from the claimed process because an art item is necessarily a unique item and not a fungible good (e.g., a good that may be sold in lots such as a diamond for example).

Independent Claim 1 is drawn to a method that includes the computer-implemented determination of a price for an article such as a gemstone. In some aspects a gemstone is fungible in nature; that is, a gemstone may be priced for sale in lots (e.g., grouped in quantities of greater than one) wherein the diamonds in a particular lot are similar to one another. Thus, even a diamond may have some degree of commodity characteristics.

Individual diamonds within a lot may be more or less valuable than the average diamond value of the lot. This extra value may be imparted by certain combinations of a diamond's properties. When individual diamonds in a lot are offered for sale, for example, by a retailer in a local jewelry shop, the retailer may carefully examine each diamond to ascertain the maximum acceptable sales price for each diamond.

While such a system of individual inspection and pricing may be acceptable for traditional personalized sales, it does not lend itself well to virtual sales methods where high volume economies of scale may be achieved by automated pricing. However, by automating

the pricing of diamonds without taking into account the diamonds' unique characteristics, a virtual retailer (e.g., an "e-tailer") may fail to realize substantial resale value from the pricing disparities that may exist between the individual diamonds in a diamond inventory (e.g., diamonds of the same lot).

The claimed method permits a reseller (e.g., an e-tailer) to determine the price at which to offer a diamond for sale (e.g., the display price) by including both objective and subjective factors in the determination of the offer price. Objective factors may include factors which are known with absolute precision such as the product's cost to the e-tailer (e.g., the wholesale cost at which a lot of diamonds was purchased). Subjective factors may include many of the properties of an individual diamond. For example particular combinations of cut, clarity, carat weight etc., may distinguish a particular diamond from other diamonds in the same lot.

In the method of the invention a diamond is priced (e.g., a display price is determined) by including subjective and objective pricing components in the determination of the offer price. The objective calculation may base price on, for example, the diamond's product cost, for example by multiplying the product cost by a certain "mark-up" factor that is completely devoid of any consideration of the subjective value components of the diamond. The subjective calculation may be based on the diamond's subjective value. A competitive price is determined by considering both the subjective and objective value components of the diamond. The objectively and subjectively derived prices are then compared to determine if there is a difference between the price.

In one aspect of the invention, a comparison of subjective and objective price components (e.g., the comparison of the sale price and competitive price) is a way for an e-tailer to identify diamonds that have a significant difference between the objective sale price and competitive price. If a substantial difference exists, an e-tailer may be placed on notice

that a particular diamond may not be suitable for sale on an automated pricing system. For example, a diamond having a high subjective value may be more amenable to sale in the personal sales environment of a jewelry store instead of a bare-bones “always the low price” virtual/internet environment.

In another aspect of the invention, an e-tailer may be able to identify diamonds in the e-tailer’s inventory that are priced only on product cost (e.g., an objective price). The e-tailer may determine that the price at which the diamonds is offered is not commensurate with the diamonds’ subjective value. This may then trigger the e-tailed to subsequently offer the diamond at the higher competitive price (e.g., a price that includes a subjective price calculation) or at a price between the competitive price and the sales price calculated by the method of the presently claimed invention.

Thus, the claimed invention provides the e-tailer with at least the following two substantial advantages: (i) the ability to identify diamonds that are not suitable for sale over the internet because it may not be possible to obtain the full benefit of the diamond’s subjective value by selling in a virtual retailing environment, and (ii) the ability to adjust an objective price to include a subjective component.

Applicants submit that the invention of the present claims is not obvious in view of the prior art cited by the Office at least because the prior art does not disclose or suggest any method which includes a comparison of a sales price determined from objective factors, such as product cost, with a competitive price determined from factors that include subjective value to thereby determine a display price based on the sale price, competitive price and difference between sale price and competitive price.

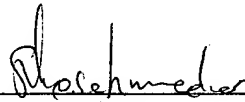
In the claimed invention a decision may be made not to display a price if the difference between the sales price and competitive price is large thereby indicating that a

particular article such as a gemstone has significant subjective value and is therefore not suitable for sale in the "generic" environment of e-tailing.

For the reasons discussed above, Applicants submit the presently claimed invention is not obvious in view of the cited prior art and respectfully request withdrawal of the rejections.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Bradley D. Lytle
Attorney of Record
Registration No. 40,073

Customer Number

22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 06/04)

Stefan U. Koschmieder, Ph.D.
Registration No. 50,238